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Counsel for plaintiffs

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE:

HARBANS S. GREWAL & MANJIT K. GREWAL

DEBTORS.

HARBANS S. GREWAL & MANJIT K. GREWAL

PLAINTIFFS,

V.

SANTA CRUZ COUNTY BANK & DOES 1-10

DEFENDANTS.

Case No. 10-60800

Chapter 7

Adversary No. 11-05067

**DECLARATION OF HARBANS S. GREWAL IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT**

HONORABLE ARTHUR S. WEISSBRODT

DATE: SEPTEMBER 9, 2011

TIME: 3.00 P.M.

PLACE: COURTROOM 3020

I, Harbans S. Grewal, declare:

1. This declaration is made upon my personal knowledge and I would and could testify as to the contents thereof.

2. I hereby authenticate each document that is attached hereto as true and correct copy of the original document. I maintain these documents in conjunction with my business. Specifically, these documents are my business records. As I identify documents in this declaration, I will insert the exhibit number in parentheses after I first mentioned the document.

3. On March 27, 2000, I purchased a service station located at 8385 Monterey Road in Gilroy ("Premises"). I have the Bill of Sale (Exhibit 1).

1 4. I operated a proprietorship known as Grewal Shell on the Premises for many
2 years.

3 5. On May 21, 2003, I bought equipment to test vehicle emission systems for
4 \$26,500.00 through a financed lease ("Lease") (Exhibit 2).

5 6. The items included a CA Bar 97 Revised Smog System, cooling fan, and a
6 dynamometer.

7 7. The dynamometer has two large rollers allowing a vehicle to stay in one place
8 while its wheels spin.

9 8. It sits in a trench, so the rollers are level with the floor. In that way, a vehicle
10 can be driven onto the rollers for the test. Two photographs (Exhibits 3 and 4)
11 illustrate that the dynamometer sits in a trench, but it is not in any way attached to the
12 ground.

13 9. I incorporated American Gas and Auto, Inc. ("American") and operated an
14 automobile repair business on the Premises. I never contributed our personal property
15 to the business.

16 10. In 2007, I sought a loan from the Defendant to refinance the loan used to
17 acquire the Premises.

18 11. In conjunction with the application, I provided the Bill of Sale to the
19 Defendant indicating ownership of the equipment at issue in this case.

20 12. On July 18, 2007, the Defendant issued a commitment letter (Exhibit 5).

21 13. Ultimately, I defaulted on the loan, and the Defendant foreclosed on the
22 Premises and its lien on American's assets.

23 14. Deborah Crawford ("Crawford"), an officer of the Defendant changed the locks
24 to the Premises and would not release my property.

25 15. although I do not have access to the Premises, I have reconstructed the
26 property that the defendant is withholding from me.

27 16. The following items listed in the Lease were on the premises when the
28 defendant changed the locks: 1. CA Bar 97 Revised Smog System, 2. Dynamometer (in

ground), and 3. Cooling Fan.

17. The following items listed in Bill of Sale were on the premises when the defendant changed the locks.

Parts cleaner (blue box)- Bill of Sale, p. 2, col. 1, item 9

Grinder - Bill of Sale, p. 1, col. 2, item 15

Repair Manuals - Bill of Sale, p. 1, col. 1, item 4

Engine Scope - Bill of Sale, p. 1, col. 2, item 1

Grease Dispenser - Bill of Sale, p. 1, col. 2, item 13

Oil drain tank - Bill of Sale, p. 2, col. 1, item 5

Mop Bucket - Bill of Sale, p. 2, col. 1, item 13

O-Rings & Quarter Pins - Bill of Sale, p. 2, col. 2, item 1

Drain Pans (3) - Bill of Sale, p. 3, col. 2, item 6

Oil Funnels - Bill of Sale, p. 3, col. 2, item 5

Parts Cart - Bill of Sale, p. 1, col. 2, item 12

Battery Water Container Bill of Sale, p. 1, col. 2, item 10

18. The following items belong to me and were on the premises when the defendant changed the locks.

Desktop computer in the shop

BMW Engine on Rollers

BMW rims with old tires

Water cooler

Small refrigerator

Miscellaneous parts

Used black hoses & nozzles

ERC tester with kit

ERG Tool

19. I appeared at the Premises to retrieve the property. At that time, Crawford presented a "Waiver of Liability and Hold Harmless Agreement" ("Agreement") to me

1 (Exhibit 6).

2 20. The Agreement falsely states that we “abandoned” our property on the
3 Premises. The Agreement also contains a covenant not to sue. When I refused to sign
4 the Agreement, Crawford refused to release the property.

5 21. My wife and I filed a voluntary petition for relief under Chapter 7 of the
6 Bankruptcy Code on October 18, 2010.

7 22. The Defendant is scheduled as an unsecured creditor being owed \$847,471.00.
8 On Schedule B, Line 29, we listed the following personal property, “Automotive
9 equipment including wheel balancer and smog machine.” The Defendant neither
10 asserted ownership of the items in the bankruptcy nor challenged the exemptions.

11 23. We received a discharge on January 19, 2011.

12 24. I am operating a new service station but cannot perform many services
13 without my equipment. For example, I cannot perform testing or certification on
14 vehicles.

15 On August 1, 2011 in the State of California, I declare under penalty of perjury
16 that the preceding testimony is true and correct.

17 /s/ Harbans S. Grewal
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Exhibit 1

BILL OF SALE

COPY

The following definitions and designations shall apply in this Bill of Sale, without regard to number or gender:

BUSINESS: ELLIS & LARRY'S SHELL

PREMISES: 6385 Monterey Street, Gilroy, CA 95020

SELLER: Larry Nardinocchi

BUYER: Harbans Singh Grewal

PROPERTY: All the assets of the above Business as previously agreed by the parties including any equipment, trade fixtures, trade name, leasehold interests, leasehold improvements, business records, licenses, franchises, goodwill, trade secrets, covenants not to compete, supplies, and resale inventory accepted by Buyer. A list of the major assets may be attached hereto for further clarification.

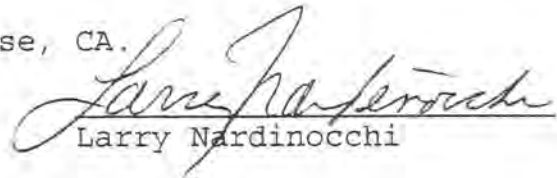
This document certifies that Seller, for good and valuable consideration, receipt of which is hereby acknowledged, does hereby transfer and deliver to Buyer, the Property described above.

Seller hereby covenants with Buyer and his legal successors that Seller is the lawful owner of said Property, that Seller has good right to sell the same and has followed all necessary procedures and obtained all necessary consents and approvals for this sale, that Seller will warrant and defend the same against the lawful claims and demands of all parties and hold Buyer harmless therefrom, and that the property is free from all encumbrances EXCEPT Buyer shall assume those Business obligations as previously agreed, which include the following:

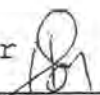
NO EXCEPTIONS

This document applies as of the transfer of ownership of the Business to Buyer.

EXECUTED on March 27, 2000 at San Jose, CA.


Larry Nardinocchi

Approved by Buyer


Harbans Singh Grewal

NON-NEGOTIABLE
PROMISSORY NOTE
(installment)

COPY

The following definitions and designations shall apply in this Note, without regard to number or gender:

BUSINESS: ELLIS & LARRY'S SHELL
PREMISES: 6385 Monterey Street, Gilroy, CA 95020

LENDER: Larry Nardinocchi

DEBTOR: Harbans Singh Grewal

PRINCIPAL: \$75,000

INTEREST: 8 percent per annum on unpaid Principal computed from 45 days after possession of Business from Lender to Debtor (Possession) which occurred on _____ (date to be completed by Escrow Holder).

INSTALLMENTS: \$1,520.73 or more per month, the first installment to be due 90 days after Possession, and all due 62 months from Possession.

LATE CHARGE: 5% of any installment received by Lender more than 10 days after its due date, which is agreed to be a reasonable estimate of Lender's damage from such delay.

For value received, the undersigned Debtor promises to pay to Lender, Principal and Interest in Installments as set forth above together with any applicable Late Charge, at a place to be designated from time to time by Lender. This Note is assignable (but not negotiable) and prepayable without penalty.

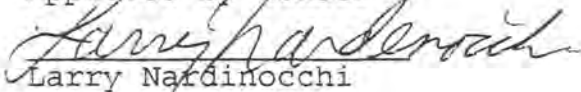
The first Installment shall be due as stated and each succeeding Installment shall be due on the same day of each month thereafter, until Principal, Interest, and any Late Charge have been paid in full.


Any payment shall be credited first on Late Charge and Interest then due and the remainder on Principal, and Interest shall then cease upon the Principal so credited. Should default be made in any payment due hereunder, the Holder of this Note may personally deliver or mail to the Business Premises or other address supplied by Debtor a written notice to Debtor to cure such default. If Debtor has not cured the default within 15 days from such mailing or personal delivery, the Holder may then accelerate and declare the whole sum of Principal and Interest due. Debtor promises to pay the reasonable attorney's fees incurred by Lender from any collection action on this Note.

This Note is secured by a Security Agreement.

EXECUTED on March 27, 2000, at San Jose, CA.

Approved by Lender


Larry Nardinocchi


Harbans Singh Grewal

3031 TISCH WAY, SUITE 510 SAN JOSE, CA 95128 (408) 246-1102 FAX (408) 246-2219
 2300 CONTRA COSTA BLVD., SUITE 370, PLEASANT HILL, CA 94523 (510) 609-9100 FAX (510) 609-9994
 2260 LAVA RIDGE CT., SUITE 100, ROSEVILLE, CA 95661 (916) 774-9000 FAX (916) 774-9050
 503 WEST LARCH RD., SUITE D TRACY, CA 95376 (800) 622-0192 FAX (800) 624-5310

Exhibit "A"

LIST OF FIXTURES & EQUIPMENT INCLUDED IN PURCHASE PRICE

Business Name Ellis and Larry's Shell Page 1 of 3

Address 8385 Monterey St

City Gilroy, California CA

Audio Video System (Lease)

Storage Building 10 x 24

2 shelving units

Repair manuals - (C)

3 shelf units for manuals

2 Decks

2 Chairs

1 Storage Cabinet

3 file Cabinets

40 Telephones

10 Clipboards

2 Battery chargers

2 Jacks

2 Stoppers

(2 Air Cond. Recovery Syst.)

R-12 + 134

1 Scope - (P)

Brake Lathe (Lease)

Misc Wall Cabinets

TIRE Rack

Battery Tester

Air Cond Tools

(15) Employee shirts

Snow machine

2 gallon barrel trash bucket

Battery water container

2 Staplers

Fast Cast

Grease Dispenser

Grease Oil Dispenser

Grinder

Vise

Approved 5-1-2000

Bruce
 BUYER - Seller

Seller

Approved 3-27-2000

Larry Vandervoort
 Buyer - SELLER

Buyer

3031 TISCH WAY, SUITE 510 SAN JOSE, CA 95128 (408) 246-1102 FAX (408) 246-2219
 2300 CONTRA COSTA BLVD., SUITE 370, PLEASANT HILL, CA 94523 (510) 609-9100 FAX (510) 609-9994
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 503 WEST LARCH RD., SUITE D TRACY, CA 95376 (800) 622-0192 FAX (800) 624-3310

Exhibit "A"

LIST OF FIXTURES & EQUIPMENT INCLUDED IN PURCHASE PRICE

Business Name _____

Page 2 of 3

Address _____

City _____, California _____

Spark Plug Cleaner

Transmission Jack

Wheel Balancer

Fire Extinguishers (4?)

Oil Drain Tank (5)

Wheel Bearing Greases

A/C Greases

Latex Gloves

2 Clocks

Parts Cleaner (Sink) (X)

Brooms & Mats

Shelves (Various)

Mop Bucket (1)

Dust Pan

Plastic Chair

Tire Changer

Dish Slide Cabinet

Approved _____ 5-1-2000

Buyer

Seller

3:LOFEINCL.DOC 09/99

Oiling Assortment

Belt ruler (2)?

Air Blower

Tire Spreader

Haz Waste Drums

Brake Bleeder

Windshield Blade Cabinet

Car Ball puller

Brake Drum Duage

2 tape Die Sets

1 Shop Vac Can

Gasoline Hose (New)

Headlamp adjusters

2 Leathers

Cooling syst pressure Test

Soldering machine

+ Repair Torch Kit

Other Various tools & Equip

Approved _____ 3-27-2000

Seller

Buyer

3031 TISCH WAY, SUITE 510 SAN JOSE, CA 95128 (408) 246-1102 FAX (408) 246-2219
 2300 CONTRA COSTA BLVD., SUITE 370, PLEASANT HILL, CA 94523 (510) 609-9100 FAX (510) 609-9994
 2260 LAVA RIDGE CT., SUITE 100, ROSEVILLE, CA 95661 (916) 774-9000 FAX (916) 774-9050
 503 WEST LARCH RD., SUITE D TRACY, CA 95376 (800) 622-0192 FAX (800) 624-5310

Exhibit "A"

LIST OF FIXTURES & EQUIPMENT INCLUDED IN PURCHASE PRICE

Business Name _____

Page 3 of 3

Address _____

City _____, California _____

map racks - 2
 Trash Buckets small - 3
 Candy shelf rack - 1
 2) Wall shelf units (sales km)
 Coffee machine
 coffee pots
 red crates
 Time clock
 Outside 45 gal Trash can (3)
 Small tool Box
 2 ~~gas~~ gasoline nozzle hoses
 Wheel Balancer
 Taped Discharge 2
 Smog Sign
 Hags + Boxes
 1 Microwave Cart

Change Buckets 3
 Squeezes - 4
 Janitors 5
 Ladder
 Oil funnel
 Oil Drain Pan
 Lamp
 Desk supplies
 Gasoline Hoses and
 nozzles @ Discharge

Approved 5-1-2000

[Signature]
 Seller BUYER

Approved 3-27-2000

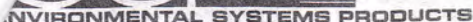
[Signature]
 Buyer SELLER

Seller

Buyer

B:\LOFEINCL.DOC 09/99

Exhibit 2



27579

Agreement Date 5-21-03

SHIP TO CUSTOMER NUMBER _____

BUSINESS NAME GREWAL SHEET

ADDRESS 8385 MONTEREY ST.

CITY, ST, ZIP GILROY, CA, 95020

PHONE NUMBER 408-842-6434

CONTACT PERSON HERB GREWAL

East Granby, CT 06026

800-446-4708

☐ C.O.D. ☐ OTHER BWC PURCHASE ORDER # _____
☒ LEASE COMPANY _____ ☐ STANDARD ☐ OTHER _____
 TAX EXEMPT? ☐ NO ☐ YES. TAX EXEMPT CERTIFICATE # _____

THIS SALES AGREEMENT IS SUBJECT TO ACCEPTANCE BY ESP.
THE TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS SALES AGREEMENT
ARE AN ESSENTIAL PART OF THE AGREEMENT BETWEEN CUSTOMER AND ESP.

Applicable Tax 2846.25

Total 40846.25

Deposit 500.00

Net Due 40346.25

SALES

ESP Sales Rep & Code 10M X NORDER DS08

Reviewed by: _____

(Sales Department)

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ESP Field Rep & Code 22

Accepted _____

(Credit Department)

Exhibit 3



Exhibit 4



Exhibit 5



July 18, 2007

Harbans S. Grewal
All American Gas & Auto, Inc. dba Gilroy Gas
8385 Monterey Street
Gilroy, CA 95020

Re: Banking Relationship Commitment

Dear Mr. Stockton,

Thank you for allowing **Santa Cruz County Bank** the opportunity to establish a relationship with you and **All American Gas & Auto, Inc.** We are pleased to inform you that **Santa Cruz County Bank** has approved the extension of credit to **All American Gas & Auto, Inc.** under the following terms and conditions:

<u>Credit Facility:</u>	\$875,000 SBA 7(a) term loan
Purpose	Refinance of Commercial Real Estate located at 8385 Monterey Street, Gilroy, CA 95010
Rate:	Wall Street Journal prime rate, plus a spread of 1.25% (currently 9.50%), adjusting quarterly.
Term:	25 year fully amortized term loan
Monthly Payments:	\$7,645 Monthly principal and interest payments.
SBA fees:	3.5% of guaranteed portion (\$22,969)
Packaging fee:	\$1,000.00
Appraisal Fee	\$3,500.00
Other fees:	Borrower to pay all out of pocket bank fees associated with loan.
Advance:	Borrower to pay all closing cost.

Put your money where your life is.

July 16, 2007

Harbans S. Grewal

All American Gas & Auto, Inc. dba Gilroy Gas

Page 2

Collateral: First Deed of Trust on Commercial Real Estate.
UCC-1 filing on business

Guarantee: Personal guarantee of Harbans S. Grewal.

Insurance: Borrower to provide bank with evidence of real estate and
business insurance.

Disbursements: Loan proceeds will be distributed by Bank directly to escrow
agent. The SBA requires a Settlement Sheet prior to
disbursement of funds.

Financial Reporting: Borrower to supply Bank on an annual basis with copy of CPA
prepared business tax returns, personal financial statements,
and personal tax returns within three (3) months of the close of
borrowers' year end.

Other Conditions: This loan is subject to the following conditions:

1. Completion of all SBA requirements and SBA approval.
2. Signed and completed loan documents acceptable to the Bank
3. Copy of Articles of Incorporation and Bylaws.
4. Copy of Fictitious business name statement for All American
Gas & Auto, Inc. dba Gilroy Gas.
5. Copy of final sign off on required EVR upgrades by the Bay
Area Air Quality Management District.
6. Copy of Case Closure letter
7. Copy of Dealer Supply Agreement
8. Receipt and satisfactory review by SCCB of note to be paid off
9. Corrected personal financial statement
10. Copy of extension for 2006 corporate tax returns
11. Completion of Commercial appraisal, Environmental report and
questioner.

July 16, 2007

Harbans S, Grewal

All American Gas & Auto, Inc. dba Gilroy Gas

Page 3

This commitment letter is provided solely for the purpose described herein and may not be disclosed to or relied upon by any other party without the Bank's prior written consent. This commitment is intended only to outline certain of the basic points of our understanding around which the final terms and documentation are to be structured. Further negotiations adding to or modifying the general scope of the major terms shall not be precluded by the issuance of this Commitment Letter and its acceptance by you. The Bank's commitment to make credit facilities available is subject to the execution of the loan agreement, note, and other documentation as required by the Bank.

Your acceptance of this commitment shall be evidenced by execution and return of this letter on or before **July 25, 2007** with a check for \$3,500 to cover the appraisal fee. Once again, thank you for allowing Santa Cruz County Bank to make this commitment available to you. If you have any questions, please feel free to call me at (831) 457-5003 ext. 2901. My fax number is (831) 462-8801 and my e-mail address is schandler@sccountybank.com.

Sincerely,



Susan Chandler
Vice President

The undersigned have reviewed this letter and fully understand the contents and conditions, and agree to proceed with the proposed financing outlined herein.

Accepted by:

Harbans S. Grewal

Date: _____

Exhibit 6

1. In consideration for receiving all personal property, as is and (see Exhibit "A" attached) abandoned by me at the location, commonly known as 8385 Monterey Rd., Gilroy, CA ("the premises"), I, Harbans Singh Grewal, Individual and President, All American Gas and Auto, Inc., hereby release, waive, discharge and covenant not to sue Santa Cruz County Bank, its officers, servants, agents and employees (hereinafter referred to as "releasees") from any and all liability, claims, demands, actions and causes of action whatsoever arising out of or relating to any loss, damage or injury, including death, that may be sustained by me, or to any property belonging to me, whether caused by the negligence of the releasees, or otherwise, while removing said personal property, or while in, on or upon the premises where the property was abandoned, while in transit to or from the premises, or in any place or places connected with the premises.

2. I am fully aware of risks and hazards connected with being on the premises and removing personal property, and I am fully aware that there may be risks and hazards unknown to me connected with being on the premises. I voluntarily assume full responsibility for any risks of loss, property damage or personal injury, including death, that may be sustained by me, or any loss or damage to property owned by me, as a result of my removing personal property from the premises, whether caused by the negligence of releasees or otherwise.

3. It is my express intent that this Release shall bind the members of my family and spouse, if I am alive, and my heirs, assigns and personal representative, if I am deceased, and shall be deemed as a Release, Waiver, Discharge and Covenant Not to Sue the above named releasees.

In signing this release, I acknowledge and represent that:

- A. I have read the foregoing release, understand it, and sign it voluntarily as my own free act and deed; and
- B. I execute this Release for full, adequate and complete consideration fully intending to be bound by same.

Date: November 18, 2010.

Signature: _____

Name Printed: Harbans Singh Grewal, Individual _____

Signature: _____

Name Printed: Harbans Singh Grewal, President, All American Gas and Auto, Inc.